

05-451 OCT 3 - 2005

No. \_\_\_\_\_  
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**In the  
Supreme Court of the United States**

CITY OF MANSFIELD, OHIO, LAWRENCE HARPER,  
PHILIP MESSER, RONALD KREUTER, DALE FORTNEY,  
AND ROBERT KONSTAM,  
*Petitioners,*

v.

JEFFREY MCKINLEY,  
*Respondent.*

**On Petition for a Writ of Certiorari to the United  
States Court of Appeals for the Sixth Circuit**

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED FOR REVIEW

- I. Whether a municipal employer and its officials may be held liable for damages under 42 U.S.C. § 1983 when they conduct a lawful *Garrity* interview and question a city police officer about job-related misconduct under threat of termination if an independent prosecutor later introduces the officer's statements against him at a criminal trial in violation of the Fifth Amendment.
- II. Whether a municipality and city officials who conduct a constitutionally sound *Garrity* interview can be held liable for damages under 42 U.S.C. § 1983 for providing the interviewee's statements to an independent prosecutor.
- III. Whether a municipal official can be held personally liable for damages under 42 U.S.C. § 1983 for testifying as a witness in a criminal trial, pursuant to a prosecutor's direction, about the substance of a municipal employee's statements obtained pursuant to a *Garrity* interview.

**LIST OF ALL PARTIES TO THE PROCEEDING**

Petitioners are City of Mansfield, Ohio, Lawrence Harper, Philip Messer, Ronald Kreuter, Dale Fortney, and Robert Konstam.

Respondent is Jeffrey McKinley.

**RULE 29.6 CORPORATE DISCLOSURE  
STATEMENT**

No public or private corporation is a party to these proceedings.

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## PETITION FOR WRIT OF CERTIORARI

Petitioners City of Mansfield, Ohio, Lawrence Harper, Philip Messer, Ronald Kreuter, Dale Fortney, and Robert Konstam respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, decided April 11, 2005, reversing in part the decision of the United States District Court for the Northern District of Ohio, Eastern Division, is published at 404 F.3d 418 (6th Cir. 2005)(App. at 3a - 55a). The Sixth Circuit's unpublished order denying Petitioners' Petition for Panel Rehearing or Rehearing *En Banc* was filed on July 19, 2005. (App. at 1a - 2a).

The opinion of the United States District Court for the Northern District of Ohio, Eastern Division, granting summary judgment in favor of Petitioners, was filed on August 27, 2003 and is unreported. (App. at 56a - 86a, 87a).

## JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on April 11, 2005 (App. at 3a). A timely Petition for Panel Re-hearing or Re-hearing *En Banc* was denied on July 19, 2005 (App. at 1a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## RELEVANT PROVISIONS

### United States Constitution, Amendment V:

No person shall be . . . compelled in any criminal case to be a witness against himself . . . .

### 28 U.S.C. Section 1331:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

### 28 U.S.C. Section 1343(a)(4):

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

...

(3) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

### Civil Rights Act - 42 U.S.C. Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

## STATEMENT OF THE CASE

### A. Introduction

This case raises the specific question whether a municipal employer and its officials can be held liable for damages under 42 U.S.C. § 1983 when they compel a city police officer to answer job-related questions concerning the officer's alleged misconduct if an independent prosecutor, in violation of the officer's Fifth Amendment rights, subsequently and unilaterally introduces the officer's statements against him at a criminal trial.

At the heart of this case lies this Court's seminal decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967). In *Garrity* and its progeny, this Court has held that the Constitution permits a public employer to require its employees to answer questions about their job-related conduct under threat of discipline, as long as the employer does not ask or require that the employee waive his Fifth Amendment right against self-incrimination. The employer, however, may impose discipline upon the employee, including termination, if the employee either admits to wrongdoing or refuses to answer the employer's questions truthfully.

Accordingly, this Court in *Garrity* balanced two competing interests, both of which carry great import to the public at large. First, it reinforced a municipality's right to compel public servants to account for their public trust; second, this Court held that the Constitution demands that the *Garrity* statements be accorded use immunity, making them inadmissible in a subsequent criminal trial of the employee, thus protecting the employee's Fifth Amendment rights. See *Lefkowitz v. Turley*, 414 U.S. 70, 81 (1973) (describing balance of interests struck by *Garrity* and its progeny).